UNITED STATES OF AMERICA

v.

KHALID SHEIKH MOHAMMED, WALID MUHAMMAD SALIH MUBARAK BIN 'ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI (RAMZI BIN AL SHIBH)

Defense Motion To Compel Discovery

(medical personnel)

22 Dec 2008

- **1.** <u>Timeliness:</u> This Motion is timely filed within the rules prescribed for military commissions.
- **Relief Sought:** On behalf of Mr. Ramzi bin al Shibh, the defense seeks to compel discovery of the concerning medical personnel mentioned in Joint Task Force Guantanamo (JTF-GTMO) medical records that have been released to the defense. The defense has been permitted to interview only 10 physicians who examined or treated Mr. bin al Shibh at some point during his time in the custody of JTF-GTMO. The defense respectfully requests that this Commission compel the government to produce contact information for each psychiatric technician and corpsman who worked with the 10 physicians whom the defense has been permitted to interview.

3. <u>Overview</u>:

Through a motion to compel filed in August 2008, the defense sought access to JTF medical personnel who treated and evaluated Mr. bin al Shibh. *See* D-023. Noting that past

¹ The government has indicated in a motion (D-075) that an additional physician, referenced as Dr. K, would be responsive to the Commission's earlier ruling, addressing the defense's motion to compel access to JTF personnel (D-023). Despite the Commission's instruction in that ruling that medical personnel be made available by 26 September 2008, Dr. K has not yet been made available to the defense. The instant request would include a motion to compel contact information for any corpsman/psychiatric technician, who worked with Dr. K in treating Mr. bin al Shibh.

experiences of Mr. bin al Shibh may play a part in his current mental capacity, this Commission ordered the defense to indicate the personnel with whom it wished to speak, and the government to response to the defense request, either with contact information for these personnel, or reasons for the denial. The defense requested access to corpsman and physicians who treated Mr. bin al Shibh; eventually, the government produced contact information for 10 physicians (general medical officers and psychiatrists). No corpsman or psychiatric technicians were produced. The defense therefore renews its earlier motion to compel access to JTF personnel, with specific focus on corpsman/psychiatric technicians.

Every one of the 10 physicians whom the defense has thus far been permitted to interview stated that , in determining whether medical or psychiatric attention was necessary for Mr. bin al Shibh, they relied upon psychiatric technicians and medical corpsmen's daily contact and reports regarding Mr. bin al Shibh. Every one of these physicians indicated that the psychiatric technician and corpsman working with them were the first line of communication with Mr. bin al Shibh, and those with most frequent contact with him. Because the medical records the defense has been provided are redacted, the defense is unable to request psychiatric technicians or corpsman by name. The defense believes, however, based on its interviews of these physicians who were assigned to JTF-GTMO, there was one psychiatric technician assigned to Camp 7 at any given time when these physicians were at GTMO. The defense is unaware of the number of corpsman involved, but would request contact with those who were in regular communication with Mr. bin al Shibh and the assigned medical officer or the JTF psychiatrist.

These corpsmen are eyewitnesses involved with Mr. bin al Shibh's condition and treatment; as such, and in keeping with this Commission's ruling in D-023 (Defense Motion to

Compel Discovery – JTF Medical Personnel), these individuals are relevant to an assessment of Mr. bin al Shibh's mental capacity. The defense has a right to present evidence in a hearing held under R.M.C. 909. To give meaning to Mr. bin al Shibh's rights at this hearing, he must have the opportunity, through counsel, to interview percipient witnesses who have relevant information to provide regarding the assessment competency. Precluding counsel from conducting discovery through interviews of these witnesses ensures that counsel will be ineffective, usurps the role of the Commission in assessing relevant evidence by eliminating the presentation of evidence, and violates established tenets of military, constitutional and international law.

Burden and Standard of Proof: As the moving party, the defense bears the burden of proof on any question of fact; this burden is met by a showing of a preponderance of evidence. *See* R.M.C. 905(c).

5. Facts:

- a. Mr. bin al Shibh, was arrested on 11 September 2002. He was placed in the custody of the DOD on or about 6 September 2006.
- b. According to the discovery the defense has been able to review, Mr. bin al Shibh has been diagnosed with a mental disease that has resulted in his being prescribed (during his time in the custody of JTF-GTMO) a variety of psychotropic medications used to treat schizophrenia and/or bipolar disorder, including Haldol, Abilify, Risperidone and Ativan.
- c. These medical records indicate that Mr. bin al Shibh was seen "acting out" in various manners, including breaking cameras placed in his cell on three occasions, covering such camera with toilet paper on several occasions, and with feces.
- d. On 16 September 2008, following a defense motion to compel discovery filed on 22 August 2008 (D-023), this Commission ruled that the parties should confer regarding access to medical personnel, and that the government should provide a basis for denying access to any particular personnel. The Commission's ruling did not distinguish medical officers from corpsman/medical assistants. Under this ruling, the government was to provide contact information, for any medical personnel it would allow access to, by 26 September 2008.
- e. Over the course of the weeks and months following the Commissions 16 September

ruling, the government has trickled to the defense the ordered contact information. The persons with whom the defense has been permitted to speak are only medical officers (psychiatrists and some general medical officers) formerly assigned to JTF-GTMO. The government systematically denied access to any corpsman.

- f. The defense has interviewed all these persons to whom the government would provide access, except one, Dr. K, for whom the defense is still waiting to obtain a means of contact. Detailed defense counsel's interviews with JTF physicians demonstrate that JTF general corpsman and psychiatric technicians worked daily at Camp 7, and observed Mr. bin al Shibh during these episodes.
- g. The physicians formerly assigned to JTF-GTMO revealed they relied heavily on the corpsmen and psychiatric technicians' assessment of Mr. bin al Shibh's condition. Many of these physicians described their routine reliance on corpsmen and psychiatric technicians to communicate with Mr. bin al Shibh, either because these corpsman or technicians were more constantly at Camp 7, or because of the physicians' belief that Mr. bin al Shibh would not speak with a female physician. When this latter situation arose, the female physicians relied entirely on the corpsman/psychiatric technician for information regarding and communication with Mr. bin al Shibh. Another physician specifically emphasized during the interview with defense counsel how much he relied on the corpsmen and the value of their performance to his work.
- h. On 4 November 2008, this Commission ordered that the Convening Authority fund 40 hours for a defense-requested mental health expert. That order specified that the defense expert was not to meet with Mr. bin al Shibh. *See* Ruling in D-017 (1) and (2).

6. Law and Argument:

- a. The M.C.A., R.M.C., Regulations for Trial by Military Commission, the Due Process Clause and International Law Require Disclosure of the Requested Information
- (1) Disclosure is Required Under the Statute, Rules and Regulations Governing Military Commissions

The M.C.A. states that "Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense." *See* 10 U.S.C. § 949j. The Regulation echoes the statute. *See* Regulation for Trial by Military Commissions 17-2(a) ("Pursuant to 10 U.S.C.§ 949j, the defense counsel in a military commission shall have a reasonable opportunity to obtain witnesses and other evidence as provided by R.M.C. 701-703, and Mil. Comm. R.

Evid. 505.").

Another rule governing the military commissions, Rule 701(c)(1), requires the government to permit the defense to examine documents and items "within the possession, custody, or control of the Government, the existence of which is known or by the exercise of due diligence may become known to trial counsel, and which are material to the preparation of the defense or are intended for use by the trial counsel as evidence in the prosecution case-in-chief at trial" (emphasis added). See R.M.C. 701(c)(1). The Discussion accompanying R.M.C. 701(c) instructs the military commission judges to look to *United States v. Yunis*, 867 F.2d 617 (D.C. Cir. 1989), which applied Federal Rule of Criminal Procedure 16,² addressing discovery, for the proper materiality standard. In Yunis, the D.C. Circuit Court ruled that the defendant was entitled to "information [that] is at least 'helpful to the defense of [the] accused." Id. at 623 (quoting Roviaro v. United States, 353 U.S. 53, 60-61 (1957)); see also United States v. Lloyd, 992 F.2d 348, 351 (D.C. Cir. 1993) ("materiality standard is not a heavy burden") (internal quotations omitted); United States v. Gaddis, 877 F.2d 605, 611 (7th Cir.1989) (defining material evidence as evidence that would "significantly help [] in 'uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment and rebuttal") (quoting *United States v. Felt*, 491 F.Supp. 179, 186 (D.D.C.1979)). Thus, the materiality standard set forth in R.M.C. 701(c) requires the prosecution to turn over any information that is "at least helpful to the defense."

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²The relevant portion of Federal Rule of Criminal Procedure 16 is nearly identical to R.M.C. 701(c)(1). It states: "Upon a defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government's possession, custody, or control and: (i) the item is material to preparing the defense." Fed. R. Crim. Proc. 16(a)(1)(E)(i). Interpretations of that federal rule are therefore persuasive here.

The rules applicable to courts-martial are important to note. Discovery in the courtmartial system is famously open. See United States v. Williams, 50 M.J. 436, 439 (C.A.A.F. 1999)("The military justice system has been a leader with respect to open discovery") That system also has a solid record of upholding the defense opportunity for access to witnesses: that right is codified in the Uniform Code of Military Justice (UCMJ), and has been reiterated in many decisions of the military's highest court. See Art. 46, U.C.M.J.; United States v. Warner, 62 M.J. 114, 119 (C.A.A.F. 2005) ("Under Article 46, the defense's "opportunity to obtain witnesses and other evidence" is to be equal to the Government's"); United States v. Garries, 22 M.J. 288, 290 (C.A.A.F. 1986). Military jurisprudence, moreover, specifically supports a broad discovery right with respect to mental health evidence. See United States v. Kreutzer, 61 M.J. 293, 301 (C.A.A.F. 2005)(Dispelling government's contention that defense failure to interview certain mental health specialists who evaluated the accused was harmless error, and noting: "We have not limited military justice jurisprudence to a narrow use of mental health evidence"). Defense counsel's responsibility to conduct investigation to obtain mental health evidence is a professional obligation. Id. The Court of Appeals for the Armed Forces (CAAF) recognizes the right of access to witnesses and evidence as part of an accused's Sixth Amendment rights. See United States v. Woolheater, 40 M.J. 170, 173 (C.A.A.F. 1994). The CAAF has further held that "access alone is not enough: the defendant has the right to present legally and logically relevant evidence at trial." Id., citing Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087 (1985); Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038 (1973).

(2) Disclosure is required under the Due Process Clause

The disclosure requirement under the R.M.C. 701(c) echoes a fundamental principle of U.S. law: The government's failure to disclose "evidence favorable to an accused upon request

violates due process where the evidence is material either to guilt or to punishment" *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The government's duty to disclose such evidence encompasses exculpatory evidence, including impeachment evidence. *United States v. Bagley*, 473 U.S. 667, 676 (1985); *United States v. Mahoney*, 58 M.J. 346, 349 (C.A.A.F. 2003) (characterizing impeachment evidence as exculpatory evidence). Such evidence is "material" "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id. at* 682.

"The message of *Brady* and its progeny is that a trial is not a mere 'sporting event'; it is a quest for truth in which the prosecutor, by virtue of his office, must seek truth even as he seeks victory." *Monroe v. Blackburn*, 476 U.S. 1145, 1148 (1986); *see also Bagley*, 473 U.S. at 675 ("The *Brady* rule is based on the requirement of due process. Its purpose is not to displace the adversary system as the primary means by which truth is uncovered, but to ensure that a miscarriage of justice does not occur").

(3) Disclosure is Required Under International Law

The Military Commissions Act (M.C.A.) and the Manual for Military Commissions (M.M.C.) incorporate the judicial safeguards of Common Article 3 of the Geneva Conventions. *See* 10 U.S.C. § 948(b)(f) ("A military commission established under this chapter is a regularly constituted court, affording all the necessary 'judicial guarantees which are recognized as indispensable by civilized peoples' for purposes of common Article 3 of the Geneva Conventions."); R.M.C., Preamble (stating that the Manual for Military Commissions "provides

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³ Whether military commissions, in fact, comply with Common Article 3 is ultimately a judicial question that Congress does not have the power to answer. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province and duty of the *judicial department* to say what the law is.") (emphasis added). Any congressional attempt to legislate an answer to such a judicial question violates the bedrock separation of powers principle and has no legal

procedural and evidentiary rules that [...] extend to the accused all the 'necessary judicial guarantees' as required by Common Article 3.") They must, therefore, be read in light of Common Article 3 and international law surrounding that provision.

The Geneva Convention Relative to the Treatment of Prisoners of War prohibits "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples." *See* Geneva Convention, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135, Common Article 3. The judicial safeguards required by Common Article 3 are delineated in article 75 of Protocol I to the Geneva Conventions of 1949.⁴ Article 75(4)(g) provides that, "anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf *under the same conditions as witnesses against him.*" (emphasis added).

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effect. *See id.* at 176-77 ("The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written."). Because a statute should be construed to avoid constitutional problems unless doing so would be "plainly contrary" to the intent of the legislature, *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988); *see also Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 347 (1936), the only reasonable interpretation is that § 948b(f) requires military commissions to comply with Common Article 3.

⁴ See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, art. 75, 1125 U.N.T.S. 3, entered into force Dec. 7, 1978 [hereinafter Additional Protocol]. The Protocol has not been ratified by the United States, but the U.S. government has acknowledged that Article 75 is customary international law. See Hamdan v. Rumsfeld, 126 S.Ct. 2749, 2797 (2006) (stating that the government "regard[s] the provisions of Article 75 as an articulation of safeguards to which all persons in the hands of an enemy are entitled"). See also Memorandum from W. Hays Parks, Chief, International Law Branch, DAJA-IA, et. al., to Mr. John H. McNeill, Assistant General Counsel (International), OSD (8 May 1986) (stating art. 75 of Additional Protocol I is customary international law). The Supreme Court has also relied on the Additional Protocol in construing the meaning of Common Article 3 of the Geneva Conventions as applied to military commissions. See Hamdan, 126 S.Ct. at 2796.

b. Under Any Reading of Established Jurisprudence, the Requested Witnesses to Mr. bin al Shibh's Medical Treatment and to his Behavior in Custody Must be Disclosed to the Defense

When the prosecution reserves to itself the determination of what evidence ought be considered, it disregards its duty to seek justice, and usurps the role of the court, defense counsel and the trier of fact. *Cf. Brady v. Maryland*, 373 U.S. 83, 87-88, n.2 (1963). The government systematic denial of any defense request to speak with corpsman/psychiatric technicians demonstrates that the government continues to attempt to control all aspects of the competency evaluation. This Commission instructed the government to provide a reason for the denial of the any witness the defense request; beyond stating a particular witness is "denied" or "irrelevant," the government ahs provided no justification for its having walled off an entire swath of medical personnel with direct knowledge of Mr. bin al Shibh's medical condition and treatment. The government's record with respect to this specific detainee, ⁶ requires defense access to the requested medical personnel so that counsel may adequately defense him. *See Kreutzer*, 61 M.J. at 301.

The defense therefore renews the simple request it originally made on 22 August 2008: provide the names of percipient witnesses to Mr. bin al Shibh's behavior and medical condition, so that interviews may be conducted to identify relevant facts for the Commission's consideration in the competency hearing. The findings of the R.M.C. 706 board are informative here, but not dispositive; the defense has the right to present evidence at a competency hearing. *See* R.M.C. 909(d), and this Commission is the ultimate arbiter regarding competency.

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⁶ See Statement of Facts in D-014, Defense Motion to Dismiss for Outrageous Government Conduct.

The witnesses the defense seeks to interview are eyewitnesses to relevant events and evidence; indeed, their observations were relied upon by physicians in assessing Mr. bin al Shibh. It is well established law that a violation of constitutional dimension arises "where the Government fails to disclose impeachment evidence that could have been used to impugn the credibility of the Government's 'key witness,' *see Giglio v. United States*, 405 U.S. 150, 154-55, 92 S.Ct. 763 (1972), or that could have 'significantly weakened' key eyewitness testimony.

Kyles, 514 U.S. at 441, 453, 115 S.Ct. 1555." *Conley v. United States*, 415 F.3d 183, 189 (1st Cir. 2005). Eyewitness evidence is invariably potential impeachment evidence: an eyewitness may contradict discrete but critical facts offered by another witness; or, an eyewitness may fully challenge another's testimony. It is entirely appropriate, therefore, to request in discovery all witnesses who have made observations of Mr. bin al Shibh's condition – all the more so where experts have indicated they have relied on these witnesses observations to make their own expert judgments.

The witnesses sought here observed Mr. bin al Shibh on several occasions, over time.

The need to interview these medical personnel is particularly acute here, where this Commission has ordered that the defense expert not be permitted to meet with or see Mr. bin al Shibh.

Accordingly, the observations of these witnesses are the only observations the defense will be permitted to have under the Commission's order, to conduct an independent defense investigation. The Commission, too, would benefit from these witnesses' assessments.

This commission system is purportedly intended to be virtually identical to the court-martial system. *See* Statement of Thomas Hartmann, BG, USAF, Dept. of Defense Press Conference, February 11, 2008 ("We are going to give them [the accused in this case] rights that are virtually identical to the rights we provide to our military members"). Allowing the

government to be the gate-keeper of the evidence to which the defense has access runs contrary to well-settled notions of military justice, but also to the commission rules themselves. *See* 10 U.S.C. § 949j. The rules should be clear: the defense is entitled to access to witnesses on an equal footing with the government. *See* U.C.M.J. Art. 46; *Warner*, 62 M.J. at 119. The defense has tried to work with the government to identify a reasonable scope of investigation. The government must not be allowed to select itself which relevant witnesses the defense may interview for purposes of investigation. Defense counsel has engaged in proper conduct to ensure the protection of witnesses' identities; defense counsel also have all the requisite security clearances that the government may deem necessary. There is therefore no reason to shield the relevant witnesses the defense requests here, above and beyond the protections accorded to the witnesses whom the defense has been permitted to contact thus far.

c. Conclusion

The integrity of these proceedings will be undermined if the defense is not afforded the opportunity to speak with the requested medical personnel; denial of access to these individuals will ensure Mr. bin al Shibh receives inadequate representation. The Commission should therefore grant the requested relief.

7. Request for Oral Argument: The defense respectfully requests oral argument on this motion. *See* R.M.C. 905(h).

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8. <u>Conference with Opposing Counsel:</u> On 22 December 2008, the defense conferred with the Prosecution regarding its requested relief. The prosecution opposes this motion.

Respectfully submitted,

By:____/s/__ CDR SUZANNE LACHELIER, JAGC, USN LT RICHARD E.N. FEDERICO, JAGC, USN Detailed Defense Counsel for Ramzi bin al Shibh

Office of the Chief Defense Counsel Office of Military Commissions 1600 Defense Pentagon, Room 3B688 Washington, DC 20301 From: Clay Trivett, Prosecutor, United States v. Mohammed, et al. To: Detailed Defense Counsel, United States v. Ramzi bin al Shibh

Subj: Prosecution response to the Defense request for identification and contact information of persons to interview ico United States v Mohammed, et al (Ramzi bin al Shibh)

The Prosecution has considered the Defense request and its response is set forth below. Prosecution's response is indicated, in bold and red italics, below the original request. There are nine different doctors from the records you have requested that the Prosecution will provide contact information for as potentially relevant witnesses to the pending RMC 909 competency hearing. The Doctors are identified in this response as Doctor A through Doctor I.

The Prosecution has sought a protective order regarding protection of the identities of JTF-GTMO personnel. Doctors identities, as well as their address, phone number, and email address will be protected by the government until such time as the Military Judge directs otherwise. To contact these individuals please call the Office of the Staff Judge Advocate, JTF-GTMO, at 5399-9917 and identify these Doctors by their corresponding letter designations and these doctors will

be made available to you.

Unless otherwise noted in its response, any Defense requests for "all the persons mentioned in any document and all persons identified within the documents you cited," are denied as either unclear as to the relevancy of the witness, or cumulative with the Doctor that was identified in the record.

The defense requests that the rank/title, full name, branch of service, duty status, address, phone number, and email address be provided for each person listed herein:

- a. The person who conducted the "Mental Health Initial Assessment" of Mr. bin al Shibh on 8 September 2006 (RBS-MED-00000427 and 428). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatrist, JTF-JMG Guantanamo Bay, Cuba." *Dr. A*
- b. The person who drafted the "Psychiatrist's Progress Notes," dated 11 September 2006 (RBS-MED-00000426). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatrist, JTF-JMG Guantanamo Bay, Cuba." *Dr. A*
- c. The person who drafted the "Psychiatrist's Progress Notes," dated 8 October 2006 (RBS-MED-00000424 thru 425). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatrist, JTF-JMG Guantanamo Bay,

Cuba." This would include the person who drafted the handwritten note on pg. 2 (RBS-MED-0000424), if different.

Dr. A

This request is denied, as you have the psychiatrist.

Dr. B

Dr. A

d. The person who drafted the "Medical Record, Progress Notes," dated 22 October 2006 (RBS-MED-00000422 thru 423). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatrist, X-5704."

*Dre A*The person who drafted the "Psychiatrist's Progress Notes," dated 3 November 2006 (RBS-MED-00000416 thru 417). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatrist, JTF-JMG Guantanamo Bay, Cuba."

Drf. AThe persons who drafted the "Psychiatrist's Progress Notes," dated 3 November 2006 (RBS-MED-00000420 thru 421). The names are redacted but the persons are identified as:

- 1. "HM2/USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
- 2. "LCDR, MC, USNR, General and Forensic Psychiatrist, JTF-JMG Guantanamo Bay, Cuba."
- This request denied as irrelevant.

 3. Drafted: "Reviewed & Noted, 11/8/06 1545"

 There is no indication that this individual even observed your client.
- 4. "MD, MPH, COL, MC, FS, US Army"

Dr. B

g. The person who drafted the "Medical Record Progress Notes," dated 13 November 2006 at 1000 (RBS-MED-00000414). The specific note is titled "HM Note" with no further notations as to the drafter.

Drh A The person who reviewed the "HM Note" on the "Medical Record Progress Notes," dated 13 November 2006 at 1000 (RBS-MED-00000414). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatry, [illegible]."

Dr. A

i. The person who drafted the "Progress Notes," dated 19 November 2006 (RBS-MED-00000415). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatry, X-5704."

Dr. A

- j. The persons who drafted the "Incident Screening Form, Delta Clinic, Det Hospital, DACU, BHU," dated 19 November 2006 (RBS-MED-00000418 thru 419). The names are redacted but the persons are identified as:
 - 1. "LCDR, MC, USNR, General and Forensic Psychiatry, X-5704."

Dr. A

2. "MD, MPH, COL, MC, FS, US Army"

This request denied as cumulative to the Doctor being provided. Dr. A

- k. The persons who obtained the Wesychian distris Progress Rectash in Arteal 2 (December 2006 (NRS-MID) (NAO) (All Self-Therma Prescantina a Etadlish the person is identified as: "LCDR, MC, MED-00000398). The name is redacted but the person is identified as: "LCDR, MC, USNR, General ask Frequency december 2 (ask Frequency december) (and TFP-HVT Guantanamo Bay, Cuba" Dr. A q. The "male psych tech" whose name is redacted from "Plan: 1." paragraph in u2. The Ipelist Mac, distribut, the field and the first and the firs
- 1. The persons who drafted the "Psychiatric Technician's Note," dated 3 January 2007 (RBS-MED-00000410). The names are redacted but the persons are identified as:
 - 1. "HM2/USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba" *This request is denied as cumulative to Doctor A.*
 - 2. "LCDR, MC, USNR, General and Forensic Psychiatrist, JTF-JMG Guantanamo Bay, Cuba."

Dr. A

m. The person who drafted the "Memorandum, Subject: Initiation of Acute Self-Harm Precautions For ISN 10013," dated 4 January 2007 (RBS-MED-00000411). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatry."

Dr. A

n. The person who drafted the "Psychiatrist's Progress Note," dated 5 January 2007 (BRS-MED-00000407). The name is redacted but the person is identified as: "LCDR, MG, USN Person was and French Psychiatrist's The glass Touch tanamed Psychiatrist's (RBS-MED-00000403 thru 404). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatrist, TFP-HVT Guantanamo Bay, Cuba."

Dr. A

- p. The person who drafted the "Psychiatrist's Progress Note," dated 7 January 2007 (RBS-MED-00000399 thru 400). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatrist, TFP-HVT Guantanamo Bay, Cuba."
- Dr. A RBS-MED-00000399.

 Denied. Observation of a detainee being uncooperative is not relevant to the pending inquiry.
- r. The person who drafted the "Psychiatrist's Progress Note," dated 8 January 2007 (RBS-MED-00000396 thru 397). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatrist, TFP-HVT Guantanamo Bay, Cuba."
- There is no redaction on 397 in the middle, however, assuming this is a request for the Dr. A redaction in the middle of 396, it is denied. A simple refusal to speak to medical
- s. The person whose name is redacted in RBS-MED-00000397, middle page. *staff does not make this witness relevant to the present inquiry.*

Denied as cumulative. You are being given the identity of the doctor.

ff. The "African-American guard" threatened, as documented in RBS-MED-00000387.

Denied. Chairperson or any members

of the bioethics committee who were simply briefed by a doctor, and where there is no indication of these doctors having personally observed the accused, are not relevant to the pending inquiry.

Prosecution will permit contact of this individual, and is still working to identify this person.

v. The person who drafted the "Psychiatrist's Note," dated 24 January 2007 at 1620 (RBS-MED-00000394 thru 395). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatry, [illegible]."

Dr. A

w. The person who drafted the "Memorandum, Subject: Presentation to Bioethics Committee of Detainee's Case to Request Involuntary Medicating with an Antipsychotic Medication," dated 26 January 2007 (RBS-MED-00000392). The name is redacted but the person is identified as: "LCDR, USN, General and Forensic Psychiatrist."

Dr. A

- x. The Chairperson of the NH GTMO Bioethics Committee on 26 January 2007 (RBS-MED-00000392).
- y. The person(s) who made hand-written notations at the bottom of RBS-MED-00000392.

Dr. B

z. The person whose name is redacted, who, "[t]he detainee also made motions to throw his water bottle at..." (RBS-MED-00000392). The person is only identified as "MC, USN, Staff Psychiatrist."

Dr. A

- aa. The person who diagnosed Mr. bin al Shibh in December 2006 as having "Delusional Disorder," as documented in RBS-MED-00000392.
- bb. The person who drafted the notes, dated 1 Feb 07 (RBS-MED-00000391 the full note appears to be missing one page in discovery). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatrist, TFP-HVT Guantanamo Bay, Cuba."

Dr. A

cc. The person who drafted the "Medical Record, Progress Notes," dated 2 and 4 February 2007 (RBS-MED-00000388 thru 390). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatry, X-5704."

Dr. A

dd. The person who drafted the "Initiation of Restraint and/or Seclusion Note," dated 7 February 2007 (RBS-MED-00000387).

Dr A

ee. The guard who Mr. bin al Shibh "threatened to throw it [camera and feces] at," as documented in RBS-MED-00000387.

Denied as cumulative, as Dr. A can testify as to what is indicated in the records.

Denied as cumulative, as Dr. A can testify as to what is indicated in the records.

Denied as cumulative to Dr A. Dr. A

gg. The person who drafted the "Medical Record, Progress Notes," dated 7 February 2007 (RBS-MED-00000386).

Dr. A Denied as cumulative to the Dr. testimony.

hh. The full contact information for "Dr. Borema" as identified in RBS-MED-00000386.

Denied. Guards are denied as being cumulative to Dr A (for 381) or Dr. C (378).

- ii. The persons who drafted the "Psychiatric Technician's Progress Note," dated 9 February 2007 (RBS-MED-00000384). The names are redacted but the persons are identified as:
 - 1. "HM2/USN, Psychiatric Technician"
 - 2. "LCDR, MC, USNR, General and Forensic Psychiatrist"
- jj. The person who drafted the "Medical Record, Progress Note," dated 9 February 2007 (RBS-MED-00000385). The name is redacted but the person is identified as: "LCDR, MC, USN, General and Forensic Psychiatry, [illegible]."

Dr. A

kk. The persons who drafted the "Psychiatric Technician's Progress Note," dated 20 February 2007 (RBS-MED-00000382 thru 383). The names are redacted but the persons are identified as:

- 1. "HM1, USN Psychiatric Technician"
- 2. "LCDR, MC, USNR, General and Forensic Psychiatrist"

Dr. A

ll. The person who drafted the "Psychiatrist's Progress Note," dated 25 February 2007 (RBS-MED-00000381). The name is redacted but the person is identified as: "LCDR, MC, USNR, General and Forensic Psychiatrist, TFP Guantanamo Bay, Cuba."

Dr. A

mm. The members of the "guard staff" that "reported that the detainee complained staff intentionally producing odors the other night and that the detainee was upset by this," as documented in RBS-MED-00000381 and 378.

nn. The person who drafted the "Psychiatrist's Progress Note," dated 2 March 2007 (RBS-MED-00000378 thru 380). The name is redacted but the person is identified as: "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba."

Dr. C

oo. The persons who drafted the "Psychiatric Technician's Progress Note," dated 3 March 2007 (RBS-MED-00000374 thru 375). The names are redacted but the persons are identified as:

Denied as cumulative to the Dr. C.

1. "HM2, USN Psychiatric Technician" Denied as cumulative to Dr. C. Dr. C

2. "LCDR, MC, USNR, Psychiatrist" Denied as cumulative to Dr. C.

Dr. C

pp. The persons who drafted the "Psychiatric Technician's Progress Note," dated 4 March 2007 (RBS-MED-00000373). The names are redacted but the persons are identified as:

- 1. "HM1, USN Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
- 2. "LCDR, MC, USNR, Psychiatrist, TFP-HVT Guantanamo Bay, Cuba"

qq. The persons who drafted the "Psychiatric Technician's Progress Note," dated 5 March 2007 (RBS-MED-00000372). The names are redacted but the persons are identified as:

- 1. "HM1, USN Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
- 2. "LCDR, MC, USNR, Psychiatrist, TFP-HVT Guantanamo Bay, Cuba" Dr. C
- rr. The person who drafted the "Psychiatrist's Progress Note," dated 6 March 2007 (RBS-MED-00000376).

Dr. C

- ss. The persons who drafted the "Psychiatric Technician's Progress Note," dated 6 March 2007 (RBS-MED-00000371). The names are redacted but the persons are identified as:
 - 1. "HM1, USN Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
 - 2. "LCDR, MC, USNR, Psychiatrist, TFP-HVT Guantanamo Bay, Cuba" **Dr. C**
- tt. The persons who drafted the "Psychiatrist's Progress Note," dated 9 March 2007 (RBS-MED-00000369 thru 370). The names are redacted but the persons are identified as:
 - 1. "HM1, USN Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
 - 2. "LCDR, MC, USNR, Psychiatrist, TFP-HVT Guantanamo Bay, Cuba" Dr. C

uu. The persons who drafted the "Psychiatric Technician's Progress Note," dated 12 March 2007 (RBS-MED-00000368). The names are redacted but the persons are identified as:

Denied as cumulative to Dr.C.

Denied as cumulative to Dr. C.

Denied as cumulative to Dr. D

- 2. "LCDR, MC, USNR, Psychiatrist, TFP-HVT Guantanamo Bay, Cuba" **Dr. D**
 - vv. The persons who drafted the "Psych Tech Screening Note," dated 20 March 2007 (RBS-MED-00000367). The names are redacted but the persons are identified as:
 - 1. "HM2, USN Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
 - 2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba"

 Denied as cumulative to

ww. The person who drafted the "Psych Tech Screening Note," dated 21 March 2007 (RBS-MED-0000366). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist, TVP-HVT-Guantanamo Bay, Cuba."

Dr. C

xx. The person who drafted the "Psychiatry Progress Note," dated 27 March 2007 (RBS-MED-0000365). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist, TVP-HVT-Guantanamo Bay, Cuba."

Dr. C

yy. The persons who drafted the "Psych Tech Progress Note," dated 3 April 2007 (RBS-MED-0000364). The names are redacted but the persons are identified as:

Dr. C.

- 1. "Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
- 2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba"

Denied as cumulative to

Dr.C.

zz. The person who drafted the "Psychiatrists Progress Note," dated 6 April 2007 (RBS-MED-0000363). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist, TVP-HVT-Guantanamo Bay, Cuba."

Dr. C

aaa. The person who drafted the "Psych Tech Progress Note," dated 6 April 2007 (RBS-MED-0000362). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist, TVP-HVT-Guantanamo Bay, Cuba."

Dr. C

bbb. The persons who drafted the "Psych Tech Progress Note," dated 19 April 2007 (RBS-MED-0000361). The names are redacted but the persons are identified as:

- 1. "HM2, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
- 2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba" Dr. C
- 3. "MD, MPH, COL, MC, FS US Army"

 Denied as cumulative to Dr.C.

 Dr. R

ccc. The persons who drafted the "Psych Tech Progress Note," dated 23 April 2007 (RBS-MED-0000354). The names are redacted but the persons are identified as:

1. "HM1, USN Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba" **Dr. C**

- 1. "HM1, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba" *Denied as cumulative to Dr. D.*
 - 2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba" **Dr. D**

Denied as

ddd. The persons who drafted the "Psych Tech Progress Note," dated 24 April 2007 (RBS-MED-0000360). The names are redacted but the persons are identified as: *cumulative to Dr. D.*

- 1. "HM1, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
- 2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba"

Dr. D

eee. The person(s) who drafted the "Psych Tech Progress Note," dated 25 April 2007 (RBS-MED-00000358).

Dr. D

fff. The person who drafted the "Confidential Memorandum, Subject: Presentation to Bioethics Committee of Detainee's Case to Request Involuntary Medicating with an Antipsychotic Medication," dated 25 April 2007 (RBS-MED-00000356 thru 357). The name of the person is redacted but the persons is identified as: "MC, USN, Staff Psychiatrist, JTF-GTMO JMG"

Dr. D

ggg. The Chairperson of the NH GTMO Bioethics Committee on 25 April 2007 (RBS-MED-00000356)

hhh. The persons who drafted the "Psych Tech Progress Note," dated 26 April 2007 (RBS-MED-00000355). The names are redacted but the persons are identified as:

- 1. "HM, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
- 2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba"

 Chairperson or any members
- iii. The persons who drafted the "Psych Tech Progress Note," dated 29 April 2007 (RBS-MED-00000353). The names are redacted but the persons are identified as:
 - 1. "HM1, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
 - 2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba" of the bioethics committee
- jjj. The persons who drafted the "Psychiatry Progress Note," dated 3 May 2007 (RBS-MED-00000342). The names are redacted but the persons are identified as:
- 1. "HM2, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba" who were simply briefed by a doctor are irrelevant.

Denied as cumulative to Dr. D.

Denied as cumulative to Dr.D.



2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba". **Dr. D**

Denied as cumulative to Dr.D.

kkk. The persons who drafted the "Psych Tech Progress Note," dated 9 May 2007 (RBS-MED-00000351). The names are redacted but the persons are identified as:

- 1. "HM2, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba" *Denied as cumulative to Dr. D.*
 - 2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba"

 Denied as cumulative to

lll. The person who drafted the "Psych Tech Progress Note," dated 14 May 2007 (RBS-MED-00000350). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist, TVP-HVT-Guantanamo Bay, Cuba."

Dr. D

mmm. The persons who drafted the "Psychiatry Progress Note," dated 21 May 2007 (RBS-MED-00000348). The names are redacted but the persons are identified as:

- 1. "HM2, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
- 2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba" **Dr. D**

nnn. The persons who drafted the "Psychiatry Progress Note," dated 25 May 2007 (RBS-MED-00000347). The names are redacted but the persons are identified as:

1. "HM1, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"

Dr. D.

2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba"

Dr. D Denied as cumulative to Dr. D.

ooo. The persons who drafted the "Psychiatry Progress Note," dated 26 May 2007 (RBS-MED-00000346). The names are redacted but the persons are identified as:

- 1. "HM2, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
- 2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba"

 Dr. D

 Denied as cumulative to Dr.D.

ppp. The persons who drafted the "Psychiatry Progress Note," dated 28 May 2007 (RBS-MED-00000345). The names are redacted but the persons are identified as:

- 1. "HM2, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
- 2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba"

 Cumulative to the Dr. D.

qqq. The persons who drafted the "Psychiatry Progress Note," dated 31 May 2007 (RBS-MED-00000343). The names are redacted but the persons are identified as:

- 1. "HM2, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
- 2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba"

Denied as cumulative to Dr. D.

rrr. The person who drafted the "Medical Officer's Note," dated 5 June 2007 (RBS-MED-00000338 thru 339). The name is redacted but the person is identified as: Dr., Attending Medical Officer."

Dr. F.

sss. The person who drafted the "Psychiatry Progress Note," dated 16 June 2007 (RBS-MED-00000337). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist, TVP-HVT-Guantanamo Bay, Cuba."

Dr. D

ttt. The person who drafted the "Psychiatry Progress Note," dated 20 June 2007 (RBS-MED-00000335). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist, TVP-HVT-Guantanamo Bay, Cuba."

Dr. D

uuu. The person who drafted the handwritten note, dated 12 June 2007 at 1130 in RBS-MED-00000336.

Dr. E

vvv. The person who drafted the handwritten note, dated 19 June 2007 in RBS-MED-00000336. The name is redacted but the person is identified as "HM3."

Donied

www. The person who drafted the "Psychiatry Progress Note," dated 23 June 2007 (RBS-MED-00000334). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist, TVP-HVT-Guantanamo Bay, Cuba."

Dr. D

xxx. The persons who drafted the "Psychiatry Progress Note," dated 1 July 2007 (RBS-MED-00000332). The names are redacted but the persons are identified as:

- 1. "HM1, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
- 2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba"

Dr. D

yyy. The person who drafted the "Psychiatry Progress Note," dated 10 July 2007 (RBS-MED-0000330). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist."

Dr. D

zzz. The person who drafted the handwritten note, dated 10 July 2007 in RBS-MED-00000331.

Dr. D

aaaa. The person who drafted the "Psychiatry Progress Note," dated 20 July 2007 (RBS-MED-00000329). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist."

Dr. D

bbbb. The persons who drafted the "Psychiatry Progress Note," dated 22 July 2007 (RBS-MED-00000328). The names are redacted but the persons are identified as:

1. "LCDR, MC, USNR, JTF Psychiatrist"

Denied as cumulative to Dr. D.

Dr. D

2. "HM2, USN, Psychiatric Technician"

cccc. The person who drafted the "Psychiatry Progress Note," dated 25 July 2007 (RBS-MED-0000327). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist."

Dr. D

dddd. The person who drafted the "Psychiatry Progress Note," dated 6 August 2007 (RBS-MED-0000429). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist."

Dr. D

eeee. The person who drafted the "Psychiatry Progress Note," dated 10 August 2007 (RBS-MED-0000430). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist."

Dr. D

ffff. The person who drafted the "Psychiatry Progress Note," dated 22 August 2007 (RBS-MED-0000431). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist."

Dr. D

gggg. The person who drafted the handwritten note, dated 27 September 2007 in RBS-MED-00000432.

Dr. F

hhhh. The person who drafted the handwritten note, dated 1 October 2007 in RBS-MED-00000432.

Dr. F

iiii. The person who drafted the "Psychiatry Progress Note," dated 3 October 2007 (RBS-MED-00000434). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist."

Dr. F

jjjj. The person who drafted the handwritten note, dated 23 October 2007 in RBS-MED-00000434. The name is redacted but the person is identified as: "CDR, MC, USN, Gen & Forensic Psychiatrist."

kkkk. The person who drafted the "Psychiatry Progress Note," dated 27 November 2007 (RBS-MED-00000435). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist."

Dr. F

Illl. The person who drafted the "Psychiatry Progress Note," dated 30 November 2007 (RBS-MED-00000436). The name is redacted but the person is identified as: "LCDR, MC, USN, JTF Psychiatrist."

Dr. F

mmmm. The persons who drafted the "Psychiatry Progress Note," dated 5 December 2007 (RBS-MED-00000437). The names are redacted but the persons are identified as:

Denied as being not relevant. The detainee simply did not answer any questions posed by this Doctor.

2. "LCDR, MC, USNR, JTF Psychiatrist, Guantanamo Bay, Cuba"

Denied as
cumulative to

Dr H

nnnn. The person who drafted the handwritten note, dated 29 January 2008 at 0900 in RBS-MED-00000438. The name is redacted but the person is identified as "Staff Psychiatrist."

Dr. F the Dr. H.

oooo. The person who drafted the "Psychiatry Progress Note," dated 5 January 2008 (RBS-MED-00000439 thru 440). The name is redacted but the person is identified as: "LCDR, MC, USN, General Psychiatrist, TFP-HVT Guantanamo Bay, Cuba."

Dr. F Denied as cumulative to Dr.H.

pppp. The person who drafted the "Psychiatry Progress Note," dated 29 January 2008 (RBS-MED-00000441). The name is redacted but the person is identified as: "CDR, MC, USN, General Psychiatrist, TFP-HVT Guantanamo Bay, Cuba."

Dr. H Denied as irrelevant.

qqqq. The persons who drafted the "Psychiatric Technician's Progress Note," dated 12 February 2008 (RBS-MED-00000442). The names are redacted but the persons are identified as:

- 1. "HM2, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
- 2. "CDR, MC, USNR, General Psychiatrist, Guantanamo Bay, Cuba"

Dr. H

rrrr. The person who drafted the "Psychiatry Progress Note," dated 1 March 2008 (RBS-MED-00000443). The name is redacted but the person is identified as: "CDR, MC, USN, General Psychiatrist, TFP-HVT Guantanamo Bay, Cuba."

Dr. H

ssss. The person who drafted the "Psychiatry Progress Note," dated 23 April 2008 (RBS-MED-00000444). The name is redacted but the person is identified as: "CDR, MC, USN, General Psychiatrist, TFP-HVT Guantanamo Bay, Cuba."

Dr. H

tttt. The persons who drafted the "Psychiatric Technician's Progress Note," dated 12 May 2008 (RBS-MED-00000445). The names are redacted but the persons are identified as:

- 1. "HM2, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"
- 2. "CDR, MC, USNR, General Psychiatrist, Guantanamo Bay, Cuba"

Dr. H

uuuu. The person who drafted the "Memorandum, Subject: Risk Assessment for Ramzi Bin-al-Shibh," dated 31 May 2008 (RBS-MED-00000446). The name is redacted but the person is identified as: "Dept Head BHU HMG GTMO" and "CDR MC USN"

Dr. H

vvvv. The "TFP Commander" on 31 May 2008 (RBS-MED-00000446).

1. "HM2, USN, Psychiatric Technician, TFP-HVT Guantanamo Bay, Cuba"

Drs. A & B

www. The person who drafted or ordered "Doctor's Orders" dated on or about October 2006 (RBS-MED-0000003). The name is redacted but the person is identified as "LCDR, MC, USNR, General and Forensic Psychiatry."

Dr. A

xxxx. The person who drafted or ordered "Doctor's Orders" dated 22 October 2006 (RBS-MED-0000005). The name is redacted but the person is identified as "MD, MPH, COL, MC, FS, US Army."

Dr. B Appears to be one person, not two people, identified as Dr. B.

yyyy. All the persons who drafted or ordered "Doctor's Orders" dated on or about December 2006-January 2007 (RBS-MED-00000011). The names are redacted but, in what is legible, two of these persons are identified as "MC, USNR, General and Forensic Psychiatry." MPH, COL, MC, FS, US Army."

zzzz. All the persons who drafted or ordered "Doctor's Orders" dated on or about January 2007 (RBS-MED-0000012). The names are redacted but, in what is legible, some of these persons are identified as "MPH, COL, MC, FS, US Army," and "MD, MPH, COL, MC, FS, US Army."

Dr. A (LIP). Other Provider is denied as irrelevant as he conducted a physical exam.

aaaaa. All the persons who drafted or ordered "Doctor's Orders" dated on or about January-February 2007 (RBS-MED-0000014). The names are redacted but, in what is legible, some of these persons are identified as "USNR, General and Forensic Psychiatry."

Dr. A

bbbbb. The person who drafted or ordered "Behavioral Restraint or Seclusion Order Form" dated 03 February 07 (RBS-MED-00000018). The name and any other identifying information is redacted.

cccc. All the persons who drafted or ordered "Doctor's Orders" dated February 2007 (RBS-MED-0000019). The names are redacted but, in what is legible, some of these persons are identified as "LCDR, USNR, General and Forensic Psychiatry."

Dr. A

ddddd. All the persons who drafted or ordered "Doctor's Orders" dated on or about February 2007 (RBS-MED-00000021). The names are redacted but, in what is legible, some of these persons are identified as "LCDR, USNR, General and Forensic Psychiatry."

Dr. A

eeeee. The person who drafted or ordered "Behavioral Restraint or Seclusion Order Form" dated 7 February 07 (RBS-MED-0000025). The name is redacted but the person is identified, in what is legible, as "MC, USNR, General and Forensic Psychiatry."

Dr. A

fffff. All the persons who drafted or ordered "Doctor's Orders" dated on or about February 2007 (RBS-MED-0000026). The names are redacted but, in what is legible, some of these persons are identified as "LCDR, USNR, General and Forensic Psychiatry" and "CDR, MC, USN."

Dr. A

Drs. A& B& C

gggg. All the persons who drafted or ordered "Doctor's Orders" dated on or about February 2007 (RBS-MED-00000028). The names are redacted but, in what is legible, some of these persons are identified as "MD, General and Forensic Psychiatry," and "LCDR, USNR, General and Forensic Psychiatry."

Dr. A

hhhhh. All the persons who drafted or ordered "Doctor's Orders" dated on or about February 2007 (RBS-MED-0000028). The names are redacted but, in what is legible, some of these persons are identified as "LCDR, MC, USNR, General and Forensic Psychiatry."

Dr. A Drs. B & C

iiiii. All the persons who drafted or ordered "Doctor's Orders" dated on or about February 2007 (RBS-MED-00000030). The names are redacted but, in what is legible, some of these persons are identified as "LCDR, MC, USNR, General and Forensic Psychiatry."

Dr. A

jjjjj. All the persons who drafted or ordered "Doctor's Orders" dated on or about February-March 2007 (RBS-MED-0000032). The names are redacted but, in what is legible, some of these persons are identified as "USNR, General and Forensic Psychiatry," and "MPH, COL, MC, FS. US Army."

Drs. B & C

kkkkk. The persons who drafted or ordered "Doctor's Orders" dated on or about March 2007 (RBS-MED-0000034). The names and any other identifying information are redacted.

Dr. C

Illl. All the persons who drafted or ordered "Doctor's Orders" dated on or about March-April 2007 (RBS-MED-0000036). The names are redacted but, in what is legible, some of these persons are identified as "MPH, COL, MC, FS. US Army."

mmmmm. All the persons who drafted or ordered "Doctor's Orders" dated on or about March 2007 (RBS-MED-0000037). The names are redacted but, in what is legible, some of these persons are identified as "MD, MPH, COL, MC, FS. US Army."

Dr. D was the attending psychiatrist. All others are denied as they were simply briefed by nnnnn. The persons who drafted or ordered "Doctor's Orders" dated on or about April-May 2007 (RBS-MED-00000038). The names and any other identifying information are redacted.

Drs. D doctor.

ooooo. All the persons named or addressed by email in the document marked RBS-MED-00000040 and dated 26 April 2007. The names are redacted, but email addresses are listed (without names), and certain persons are identified board members and listed as "LCDR, Medical Corps, Chair;" "LCDR, Medical Corps, Acting Chair;" "CDR, Dental Corps;" "CDR, Nurse Corps;" "CDR, JAG;" "LCDR, MEdicalo Corps;" LT, Medical Service Corps;" HMC, SEL."

Dr. B& D

ppppp. All the persons who drafted or ordered "Doctor's Orders" dated on or about May 2007 (RBS-MED-00000042). The names any other identifying information are redacted.

Dr. D

qqqqq. All the persons who drafted or ordered "Doctor's Orders" dated on or about May-June 2007 (RBS-MED-0000043). The names are redacted but, in what is legible, one of these persons is identified as "MD, MPH, COL, MC, FS. US Army."

Dr. D & E

rrrrr. All the persons who drafted or ordered "Doctor's Orders" dated on or about June 2007 (RBS-MED-0000044). The names are redacted but, in what is legible, one of these persons is identified as "MD, MPH, COL, MC, FS. US Army."

Dr. B

sssss. All the persons who drafted or ordered "Doctor's Orders" dated on or about June 2007 (RBS-MED-00000045). The names any other identifying information are redacted.

Dr. D Dr. I & J

ttttt. All the persons who drafted or ordered "Doctor's Orders" dated on or about July 2007 (RBS-MED-00000045). The names any other identifying information are redacted.

Dr. D

uuuuu. All the persons who drafted or ordered "Doctor's Orders" dated on or about June 2007 (RBS-MED-00000047). The names and any other identifying information are redacted.

Dr. H & G

vvvvv. The person who drafted or ordered "Doctor's Orders" dated on or about June 2007 (RBS-MED-0000048). The name and any other identifying information are redacted.

Dr. 1

wwww. All the persons who drafted or ordered "Doctor's Orders" dated on or about May-June 2007 (RBS-MED-0000049). The names are redacted and any other identifying information is redacted.

xxxxx. All the persons who drafted or ordered "Doctor's Orders" dated on or about January 2008 (RBS-MED-0000052). The names any other identifying information are redacted.

yyyyy. All the persons who drafted or ordered "Doctor's Orders" dated on or about November-December 2007 (RBS-MED-0000054). The names any other identifying information are redacted.

zzzzz. All the persons who drafted or ordered "Doctor's Orders" dated on or about August 2007 (RBS-MED-0000056). The names any other identifying information are redacted.

Dr. G

Dr. D, E & I

Dr. I & J

aaaaa. All the persons mentioned in the "Radiologic Examination Report" (RBS-MED-00000071) dated as having been "interpreted on 21 December 2006." The names any other identifying information are redacted.

Dr. A

bbbbb. All the persons mentioned in the "Radiologic Examination Report" (RBS-MED-00000073) showing an "Exam Date" of 19 December 2006. The names any other identifying information are redacted.

Dr. A Dr. D

ccccc. All the persons mentioned in document numbered RBS-MED-00000263. The name and any other identifying information are redacted.

Dr. 1

dddddd. All the persons mentioned in document numbered RBS-MED-0000292. The names are redacted but, in what is legible, one of these persons is identified as "MD, MPH, COL, MC, FS. US Army."

Dr. B

ffffff. All the persons mentioned in document numbered RBS-MED-00000317. The name and any other identifying information are redacted.

gggggg. All the persons mentioned in document numbered RBS-MED-0000327. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

hhhhhh. All the persons mentioned in document numbered RBS-MED-0000328. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

iiiiii. All the persons mentioned in document numbered RBS-MED-0000329. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

jjjjjj. All the persons mentioned in document numbered RBS-MED-0000330. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

kkkkk. All the persons mentioned in document numbered RBS-MED-0000331. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

llllll. All the persons mentioned in document numbered RBS-MED-0000332. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

mmmmmm. All the persons mentioned in document numbered RBS-MED-0000334. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

nnnnn. All the persons mentioned in document numbered RBS-MED-0000335. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

oooooo. All the persons mentioned in document numbered RBS-MED-0000336. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr

pppppp. All the persons mentioned in document numbered RBS-MED-0000337. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr

qqqqq. All the persons mentioned in document numbered RBS-MED-0000339. The names are redacted but, in what is legible, one of these persons is identified as a doctor and "attending medical officer."

Dr. E

rrrrr. All the persons mentioned in document numbered RBS-MED-0000343. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

ssssss. All the persons mentioned in document numbered RBS-MED-0000345. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

tttttt. All the persons mentioned in document numbered RBS-MED-0000346. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

uuuuu. All the persons mentioned in document numbered RBS-MED-0000347. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

vvvvvv. All the persons mentioned in document numbered RBS-MED-0000348. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

wwwww. All the persons mentioned in document numbered RBS-MED-0000350. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

xxxxxx. All the persons mentioned in document numbered RBS-MED-0000351. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

yyyyyy. All the persons mentioned in document numbered RBS-MED-0000354. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

zzzzzz. All the persons mentioned in document numbered RBS-MED-0000355. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

aaaaaaa. All the persons mentioned in document numbered RBS-MED-0000360. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. D

bbbbbbb. All the persons mentioned in document numbered RBS-MED-0000362. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. C

cccccc. All the persons mentioned in document numbered RBS-MED-0000363. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. C

dddddd. All the persons mentioned in document numbered RBS-MED-0000367. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. C

eeeeeee. All the persons mentioned in document numbered RBS-MED-0000377. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. C

fffffff. All the persons mentioned in document numbered RBS-MED-0000380. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist, JTF-HVT."

Dr. C

ggggggg. All the persons mentioned in document numbered RBS-MED-0000357. The names are redacted but, in what is legible, one of these persons is identified as "MC, USN, Staff Psychiatrist, JTF GTMO JMG."

Dr. D

hhhhhhh. All the persons mentioned in document numbered RBS-MED-0000381. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USNR, General and Forensic Psychiatry, TFP GTMO, Cuba."

Dr. A

iiiiiii. All the persons mentioned in document numbered RBS-MED-0000383. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USNR, General and Forensic Psychiatry, TFP GTMO, Cuba."

Dr. A

Drs. F & G, although you incorrectly identify the signature block.

jjjjjjj. All the persons mentioned in document numbered RBS-MED-0000391. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USNR, General and Forensic Psychiatry, TFP GTMO, Cuba."

Dr. A

kkkkkk. All the persons mentioned in document numbered RBS-MED-0000395. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USNR, General and Forensic Psychiatry, TFP GTMO, Cuba."

Dr. A

llllll. All the persons mentioned in document numbered RBS-MED-0000429. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist."

Dr. D

mmmmmmm. All the persons mentioned in document numbered RBS-MED-0000430. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist."

Dr. D

nnnnnn. All the persons mentioned in document numbered RBS-MED-0000431. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist."

Dr. D

ooooooo. All the persons mentioned in document numbered RBS-MED-0000434. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist."

Dr. A

ppppppp. All the persons mentioned in document numbered RBS-MED-0000435. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist."

Dr. F

qqqqqq. All the persons mentioned in document numbered RBS-MED-0000438. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, JTF Psychiatrist."

rrrrrr. All the persons mentioned in document numbered RBS-MED-0000439. The names are redacted but, in what is legible, one of these persons is identified as "LCDR, MC, USN, General Psychiatrist."

Dr. F

sssssss. All the persons mentioned in document numbered RBS-MED-0000441. The names are redacted but, in what is legible, one of these persons is identified as "CDR, MC, USN, General Psychiatrist."

Dr. H

ttttttt. All the persons mentioned in document numbered RBS-MED-0000442. The names are redacted but, in what is legible, one of these persons is identified as "CDR, MC, USN, General Psychiatrist."

Dr. H

Dr. B & D

uuuuuu. All the persons mentioned in document numbered RBS-MED-0000443. The names are redacted but, in what is legible, one of these persons is identified as "CDR, MC, USN, General Psychiatrist."

Dr. H

vvvvvvv. All the persons mentioned in document numbered RBS-MED-0000444. The names are redacted but, in what is legible, one of these persons is identified as "CDR, MC, USN, General Psychiatrist."

Dr. H Dr. B & D

wwwwww. All the persons mentioned in document numbered RBS-MED-0000445. The names are redacted but, in what is legible, one of these persons is identified as "CDR, MC, USN, General Psychiatrist."

Dr. H

xxxxxxx. All the persons mentioned in document numbered RBS-MED-0000446. The names are redacted but, in what is legible, one of these persons is identified as "CDR, MC, USN, General Psychiatrist."

Dr. H Dr. B & D

yyyyyyy. All the persons mentioned in document numbered RBS-MED-00000200. The name and any other identifying information are redacted.

zzzzzzz. All the persons mentioned in document numbered RBS-MED-0000201. The names are redacted but, in what is legible, one of these persons is identified as "MD, MPH, COL, MC, FS. US Army."

Dr. B

aaaaaaaa. All the persons mentioned in document numbered RBS-MED-00000204. The name and any other identifying information are redacted.

bbbbbbbb. All the persons mentioned in document numbered RBS-MED-00000205. The name and any other identifying information are redacted.

Dr. B

ccccccc. All the persons mentioned in document numbered RBS-MED-00000209. The name and any other identifying information are redacted.

ddddddd. All the persons mentioned in document numbered RBS-MED-00000212. The name and any other identifying information are redacted.

Dr B

eeeeeeee. All the persons mentioned in document numbered RBS-MED-00000213. The name and any other identifying information are redacted.

Dr. B

ffffffff. All the persons mentioned in document numbered RBS-MED-00000223. The name and any other identifying information are redacted.

gggggggg. All the persons mentioned in document numbered RBS-MED-00000224. The name and any other identifying information are redacted.

Dr. B & A

Denied as irrelevant.

Dr. B

hhhhhhh. All the persons mentioned in document numbered RBS-MED-00000234.

The name and any other identifying information are redacted.

Please contact me with any questions you may have or if you are having any difficulties getting in touch with any of these individuals. I may be reached at 703-556-5095.

Very respectfully,

/**S**/

Clay Trivett

UNITED STATES OF AMERICA

v.

KHALID SHEIKH MOHAMMED; WALID MUHAMMAD SALIH MUBARAK BIN 'ATTASH; RAMZI BINALSHIBH; ALI ABDUL AZIZ ALI; MUSTAFA AHMED AL HAWSAWI

D-078

Government Response

to the
Defense Motion to Compel Discovery:
Medical Personnel

24 December 2008

- **1.** <u>Timeliness</u>: This response is timely filed.
- **2.** Relief Sought: The Government respectfully requests the Military Judge deny the Defense Motion to Compel Discovery: Medical Personnel, because the requested contact information for each psychiatric technician and corpsman who worked with the ten doctors the Defense has contacted, is not required as these witnesses are irrelevant (and also cumulative with other information available to the Defense) to the pending issue of whether the accused is currently mentally competent. Further, the Government has complied with its discovery obligations with respect to the upcoming RMC 909 hearing.
- **3. Burden of Proof**: As the moving party, the Defense bears the burden of persuasion. See Rule for Military Commissions (RMC) 905(c). The Prosecution has complied and intends to comply with all of its discovery obligations, therefore the Defense retains the burden of persuasion on why the information it seeks is required for the pending RMC 909 hearing.
- 4. Overview: The Prosecution respectfully requests the Military Judge deny the Defense Motion to Compel Discovery for a number of reasons. First, the Defense request is based upon a faulty assumption that that the impressions of any and all personnel who observed the accused would be relevant to an adequate mental competency assessment of the accused. Second, it is unlikely that any of the requested personnel would have any additional information regarding their observations, above and beyond what was documented, in the previously provided discovery. Third, the doctors who prepared the report for the 706 Board have already presented a diagnosis of the accused based upon their review of the available discovery, without finding a need to discuss the records with any additional personnel who may have observed the accused. Fourth, observations of the requested corpsmen and psychiatric technicians (which have already been documented and provided in discovery) are irrelevant to the pending issue as the corpsmen and psychiatric technicians lack the training, expertise and credentials to provide an assessment of the accused's current mental capacity.

5. <u>Facts</u>:

- I. On 1 July 2008 the Military Judge ordered a board be convened pursuant to RMC 706 to inquire into the mental capacity of the accused. The Military Judge ordered that the 706 Board, in its evaluation, make separate and distinct findings as to each of the following questions:
 - i. Is the accused *presently suffering* from a mental disease or defect? If so, what is the clinical psychiatric diagnosis?
 - ii. Does the accused have *the present ability* to consult with his lawyers with a reasonable degree of cognitive understanding and does he have a rational as well as a factual understanding of the proceedings against him? If so, does the accused have sufficient mental capacity to understand the nature of the proceedings against him (trial by commission) and to conduct or cooperate intelligently in the defense? See 1 July 2008 Order of Colonel Kohlmann (emphasis supplied).
- II. On 22 August 2008, Defense Counsel filed a Motion to Compel Discovery: Identities of Medical and Custodial Personnel (D-23). The Commission, in its 16 September 2008 ruling on D-23, ordered that the Defense provide the Prosecution with a specific list of persons it wishes to interview with specific references made to the portions of the related discovery material no later than 19 September 2008. The Commission further ordered that the Prosecution provide contact information to the Defense or provide a response to the Defense citing a specific basis for such a refusal, no later than 26 September 2008.
- III. On 26 September 2008, the Prosecution provided Defense counsel with contact information for nine different doctors identified by the Defense in previously provided discovery. According to medical records, these doctors observed, diagnosed and treated the accused for the past two years, including the time period that the accused was diagnosed and treated for a psychiatric disorder. At this time, the Prosecution also denied the Defense request for identities of JTF-GTMO personnel other than the doctors. The Prosecution denied these individuals on relevancy and/or the cumulative nature of the testimony. (See Attachment A). The Prosecution notified the Defense that it would provide access to every doctor found in the DoD medical records who treated the accused. It notified the Defense counsel that these doctor's names would be protected. Consistent with the Military Judge's ruling in D-023 regarding protecting identities of personnel, the Doctors were assigned letters (A thru J) by JTF-GTMO and the Prosecution provided a "key" listing what doctors corresponded with what letters on the medical records. See Ruling, D-023, para 3(2). As of the 26 September 2008 date, neither the Prosecution nor the Defense was aware of the true identities of the doctors. Consistent with instructions given to the Prosecution by JTF-GTMO, the Prosecution informed the Defense to contact JTF-GTMO, who would facilitate the Defense's access to these doctors.

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- IV. On 16 October 2008, the RMC 706 Board submitted its *Conclusions of Inquiry into the Mental Capacity of Ramzi Bin Al Shibh* to the parties. The 706 Board consisted of a Board-certified general and forensic psychiatrist and a Board-certified general psychiatrist. In conducting their evaluation, the doctors reviewed numerous categories of documents, including, but not limited to: 1) the accused's medical and psychological records which included material related to interrogations up to 2003 to 2006; and 2) the accused's medical records from 2006 to 2008.
- V. In its findings, the Board was unable to make a definitive diagnosis of the accused's current mental capacity due to the refusal of the accused to be interviewed. However, the Board concluded that the accused had a severe mental disease or defect in the recent past, and that it was very likely that the accused continued to have a severe mental disease. The Board further concluded that:
 - i. the accused has the present ability to consult with his lawyers;
 - ii. the accused has a rational as well as factual understanding of the proceedings;
 - iii. the accused has sufficient mental capacity to understand the nature of the proceedings;
 - iv. the accused is suffering from a mental disease that has the potential to impair his ability to conduct or cooperate intelligently in his defense.
- VI. On 4 November 2008, the Defense first sought to contact these witnesses by contacting the SJA's office at JTF-GTMO, despite having been in receipt of the contact instructions for the doctors for approximately forty days.
- VII. On 5 November 2008, JTF-GTMO notified the Prosecution, for the first time and contrary to their first instruction that it would act as the conduit to these doctors, and that the Prosecution would now be responsible for gathering and providing the contact information for these witnesses.
- VIII. On 6 November 2008, the Prosecution received the names of these doctors for the first time from JTF-GTMO.
- IX. On 14 November 2008, after having gathered and contacted these individuals over the previous week, the Prosecution sent contact information to the Defense for four of the ten doctors for whom it had obtained contact information.
- X. On 17 November 2008 the Prosecution sent contact information to the Defense for three of the remaining six doctors for whom it had obtained contact information.
- XI. On 19 November 2008 the Prosecution provided contact to the Defense for an additional doctor.

- XII. On 4 December 2008 the Prosecution sent contact information to the Defense for the ninth doctor, and informed the Defense that it had contact information for the last doctor, but had been unable to reach the doctor.
- XIII. On 5 December 2008 the Prosecution sent contact information to the Defense for the tenth, and final, doctor identified in the DoD records currently in the possession of the Defense.
- XIV. On 19 December 2008, the Military Judge ordered that the RMC 909 hearing for the accused would begin on 19 January 2009.
- XV. On 22 December 2008, the Defense filed the motion seeking to compel contact information for witnesses approximately 87 days after they were initially denied by the Prosecution on 26 September 2008. The motion indicated that the Defense counsel has spoken to all ten doctors they had contact information for.

6. <u>Discussion</u>:

- a. The most recent Defense Motion to Compel requests additional information that is irrelevant to the pending issue of whether the accused is currently mentally competent. The arguments asserted in the most recent Defense motion are identical to those made in D-023, Defense Motion to Compel filed on 22 August 2008; D-042, Motion to Compel filed on 12 September 2008; and D-75, Motion to Compel Compliance with Commission Ruling on D-042¹. Accordingly, the Prosecution will not duplicate its response to the law portions of the above-mentioned motions and hereby incorporates by reference the Prosecution's Response to D-023, filed on 12 September 2008; the Prosecution's Response to D-042, filed on 3 October 2008, and the Prosecution's Response to D-075, filed on 9 December 2008.
- b. The instant motion recycles a request originally made by the Defense on 22 August 2008, in which they requested access to all personnel referenced in medical records they had been provided. The Defense asserted that the witnesses sought to be interviewed were experts and eyewitnesses who observed the accused on several occasions. Further, the Defense argued that the "need to identify and interview all medical personnel is particularly acute when the government is expected to call medical personnel conducting the RMC 706 evaluation, who will have only observed [the accused] on one occasion..." *See Defense Motion D-023*, p. 9.
- c. In response to the Defense request, the Prosecution provided contact information for ten medical doctors referenced in the medical records who treated the accused from 2006 through the time of the pending motion in September 2008. The Prosecution

¹ D-042 and D-075 are both classified filings. If the Military Judge does not have access to these motions, the Prosecution will be happy to provide them.

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response denied the Defense requests for other persons mentioned in the medical records relevancy and/or as being cumulative. *See, Attachment A, Prosecution Letter to Defense, dated 26 September 2008.* As detailed in the instant motion, the Defense has now interviewed all of the doctors² who treated the accused over the past 2 years.

- d. The information and contact information sought in the instant Defense motion, filed over three months after the Commission ruling on D-23, and eighty seven days after the Prosecution production of the contact instructions in the first instance, are no more relevant (or less cumulative) than they were on 26 September 2008 when the Prosecution denied production of the information. The fact that doctors may have relied upon the observations of these corpsman or technicians does not change the analysis.
- e. From 26 September until 5 November 2008, the Prosecution was unaware that the Defense had not contacted the witnesses that it had requested contact information for and had no way to know that JTF-GTMO would eventually change the process for contacting these witnesses. While the Defense may have had a good-faith reason for waiting over forty days from the time the process for contacting the doctors was provided to them, the truth of the matter is, had the Defense attempted to contact these doctors soon after the process was explained to them (and even if it took a similar amount of time for the Prosecution to gather the contact information), the Defense could have spoken with nearly all of the doctors by the end of October.
- f. The previous observations of the behavior of the accused as documented in the medical records is not disputed by the Prosecution, and in fact, was relied upon by the 706 Board in their determination that the accused likely suffered from a past delusional disorder. Again, the Prosecution does not dispute this diagnosis or any of the recorded observations of the accused contained in the medical records which will be part of the record before the Military Judge at the upcoming RMC 909 hearing. The Military Judge will also have the benefit of his own observations of the accused during previous trial sessions held on 8 December 2008, a review of transcripts of previous trial sessions in which the accused participated in discussions with the prior Military Judge, and observations of the accused at the RMC 909 hearing.
- g. The instant Defense motion contains no relevant basis for receiving access to all corpsmen and psychiatric technicians that worked with the treating doctors during the past two years for purposes of the investigation into the accused's current mental status. All observations of the requested individuals have been memorialized in records provided to the Defense in discovery, and the Prosecution will not object to the entry of these records into evidence. The Defense has already been provided access to those doctors who diagnosed and actually treated the accused for a psychiatric disorder, and as mentioned *supra*, those records will be part of the record that the Military Judge considers prior to ruling on the accused's current mental capacity.

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² In the updated medical records (from May 2008-current (as of early December)) one additional Doctor, to be identified as Dr. K, was identified. The Prosecution is in the process of determining his or her identity and contact information so that it may provide it to the Defense.

- h. Contrary to the Defense claims, the Military Judge has never determined that the individuals the Defense sought were relevant witnesses. In fact, the Military Judge declined to act on this aspect of the motion until the initial process of attempted discovery resolution between the parties was completed. This occurred because the Defense, as they have since the advent of the issue of the accused's mental competency, have continued to make requests that may best be described as "blanket requests" without articulating the relevancy of each (or any) of these witnesses. While the Military Judge did state that the Prosecution should be *informed* by the Commission's determination that past experiences of the accused and past observations of the accused may reasonably play a part in an analysis of his current mental capacity, that is a far cry from a ruling that all personnel who came in contact with the accused for the past two years are relevant to the RMC 909 inquiry of the accused's *present* mental state. The Prosecution reasonably complied with the Military Judge's determination in D-023 that past experiences and observations may be relevant to the current inquiry when it agreed to provide contact information for every doctor who had treated the accused over the last twenty seven months.
- i. The Defense assertions in the instant motion, that the treating doctors relied upon psychiatric technicians and medical corpsmen's daily contact with the accused in determining whether medical or psychiatric attention was required, is equally irrelevant. Such observations by medical staff who are not trained to actually prescribe treatment regimens or to diagnose patients, would never be a substitute for the accurate diagnosis and treatment of a trained professional, all of whom the Defense has had complete access.
- j. The weakness of the Defense motion to compel is further highlighted by the lack of any declaration from a medical doctor who actually treated the accused, that an accurate assessment of the accused's current mental capacity could be based solely upon the observations of corpsmen and psychiatric technicians. The treating doctors' reliance upon the observations of corpsmen and psychiatric technicians to determine an appropriate treating regimen is hardly the same information that would be required to adequately, competently, and professionally determine the accused's current mental state.
- k. As discussed in the Government's Response to D-75, filed on 9 December 2009, forensic psychiatrists often require a patient evaluation in addition to a review of past medical records in order to adequately assess *present* mental competence. The Defense arguments made in the numerous and duplicative motions to compel discovery relating to the mental competency of the accused continually fail to acknowledge that the issue pending before the Commission is whether the accused has the *present* ability to consult with his lawyers and understand the nature of the proceedings against him, and to conduct or cooperate intelligently in the defense. *See, 1 July 2008 Order*.
- 1. The Defense has been provided extraordinary access and resources for the pending RMC 909 hearing. It has had access to ten³ different doctors who treated their client over the past 27 months. It has met with, spoken to, and were interviewed by the

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³ Soon to be eleven once contact information for Dr. K is obtained by the Prosecution.

board-certified psychiatrists who comprised the RMC 706 Board, and it has access to the accused's medical records through May 2008.⁴ The Defense was given unprecedented access to Camp 7, the facility whose very location is classified, where the accused is detained and where he receives medical treatment, and has received classified pictures of relevant portions of the facility. The Defense is also being provided, at government expense, a forensic psychologist of their choosing, to assist them in preparing for the RMC 909 hearing. What the Defense further seeks (access to every corpsman or psychiatric technician who worked for the doctors who treated the accused) is not required by law, is irrelevant to the present inquiry and cumulative with any observations noted in the medical records. The Defense has all relevant information that is required for the RMC 909 hearing. Any further motion to compel identities of JTF-GTMO personnel should be denied. This commission should proceed to the RMC 909 hearing as previously scheduled.

- 7. <u>Conclusion</u>: The Prosecution respectfully requests that the Military Judge deny the Defense Motion to Compel Discovery regarding the contact information for all corpsmen and psychiatric technicians who worked with the doctors who treated the accused over the last twenty seven months. Any observations made by such individuals have little to no relevance to the current inquiry, and are at best cumulative to the observations that have already been documented in medical records provided to the Defense, and which will be available to the Military Judge (the ultimate fact finder on this issue) to review in connection with the RMC 909 hearing.
- **8.** Request for Oral Argument: The Prosecution does not request oral argument.
- 9. Attachments.
 - a. Letter from Prosecution to Defense regarding discovery dated 26 September 2008.

10. Respectfully Submitted by:

//S// Clayton Trivett, Jr. Prosecutor

Joanna Baltes Prosecutor

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⁴ Records from May 2008 to early December were initially withheld pending the Military Judge's signing of the omnibus protective order, entered into force 18 December 2008. On 24 December 2008 these medical records, along with the DIMS reports, were provided to the SSA's office for pick up by the Defense.